

EXHIBIT B

DRAFT PROPOSED SCHEDULING ORDER AND DISCOVERY PLAN
for Discussion

SPECIAL SCHEDULING REVIEW REQUESTED

This proposed Scheduling Order and Discovery Plan comports with Fed. R. Civ. P. Rule 26(f) and LR 26-1. To the extent that time periods or deadlines do not comply with standard practices or time frames, that is due to the unique circumstances of this case, the complexity of issues, and the number of parties involved in this case. Special scheduling review by the Court will be required.

1. Responses to the Amended Counterclaims. Any party may answer the First, Second and Third Claims for Relief asserted by the United States in its First Amended Counterclaim (ECF 59) and the First Amended Counterclaim of the Walker River Paiute Tribe (ECF 58) on or before July 1, 2019. Only answers and affirmative defenses will be allowed. There will be no counterclaims required or permitted. Establishment of this date for the filing of answers does not change the provisions of the April 18, 2000 Case Management Order (ECF 108) at page 12, paragraph 13, that no default shall be taken under Fed. R. Civ. P. 55, and the Court will take no action to enter a default or a default judgment under that Rule against any party not filing an answer.

2. Initial Disclosures. The initial disclosures required by Fed. R. Civ. P. Rule 26(a) will be made by the United States, the Tribe, and parties filing answers on or before July 15, 2019.

3. Discovery. In addition to the initial disclosures referenced in paragraph 2 above and the expert disclosures referenced in paragraph 4 below, the following discovery plan is proposed:

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a. Subjects of Discovery. Discovery will be related to the legal and factual bases for the water right claims asserted for the Tribe in the First Amended Counterclaims and related to the Answers, including affirmative defenses asserted in response thereto.

b. Commencement. Discovery governed by Fed. R. Civ. P. Rules 28 through 37 shall commence on July 15, 2019.

c. Privileged Material. Pursuant to Fed. R. Evid. 502(d), production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding.

d. Discovery Cut-Off Date. The last day for discovery shall be January 31, 2021. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date.

e. Amending the Pleadings and Adding Parties. The parties shall have until January 1, 2020 to file any motions to amend the pleadings or to add parties; and

f. Interim Status Report. The parties shall file the interim status report required by LR 26-3 by November 30, 2020. The undersigned counsel certify that they have read LR 26-3 and that the due date for the interim report is agreed not to be later than 60 days before the discovery cut-off date.

4. Expert Disclosure and Reports. Disclosure of experts shall proceed according to Fed. R. Civ. P. 26a)(2), except that:

a. The disclosure of such experts and expert reports by the United States and the Tribe shall occur on or before ____(TBD)_____.

b. The disclosure of responsive experts and expert reports by any party filing an answer to the Amended Counterclaims shall be on or before 6 months after the disclosure deadline for expert and expert reports by the United States and Tribe.

c. The disclosure of rebuttal experts and rebuttal expert reports by the United States and the Tribe shall be 90 days after the deadline for responsive expert disclosures and expert reports; and

d. Deposition of any expert witness may commence immediately after the expert witness's expert report has been disclosed.

5. Dispositive Motions. Dispositive or partially dispositive motions may be filed at any time after July 1, 2019, but no later than April 30, 2021 (three months after the end of Discovery). Responses to dispositive or partially dispositive motions shall be submitted no later than 60 days after a motion is filed. Replies to dispositive or partially dispositive motion responses shall be submitted no later than 30 days after responses to a motion are filed.

6. Pretrial Order. A joint pretrial order will be submitted as further ordered by the Court concerning any remaining disputed issues of fact to be resolved through trial.

7. Fed. R. Civ. P. Rule 26(a)(3) Disclosures. The disclosures required by Fed. R. Civ. P. 26(a)(3) will be submitted as further ordered by the Court.

8. Alternative Dispute Resolution. The parties have conferred about the possibility of using alternative dispute resolution processes. The parties are not opposed to settlement conference or other alternative methods of dispute resolution as contemplated by LR 16-5 at an appropriate time.

9. Alternative Forms of Case Disposition. The parties have considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial Program (General Order 2013-01). The parties do not consent to the use of a magistrate judge to address the Amended Counterclaims.

10. Electronic Discovery. The parties agree that production of disclosures pursuant to Fed. R. Civ. P. 34 may (but is not limited to) occur in paper or a convenient electronic format, but

that all information will be preserved in its native electronic format, and will be produced in such format only upon request. Such request may occur either initially or after review of previous production. A party shall have 30 days to respond to a request for production in native format, if the subject of the request has previously been produced otherwise. Unless unduly burdensome or costly, the parties agree that PDF files that are produced will be electronically searchable, and hard copies that are produced will be of sufficient quality to scan into electronically searchable files.